

## **complaint**

Mr Q is unhappy with Bank of Scotland plc's decision to hold him responsible for transactions on his current account which he says he didn't make or authorise.

## **background**

Mr Q contacted Bank of Scotland at the end of July 2017 after he was unable to withdraw money from a cash machine due to insufficient funds. It was following that attempted withdrawal that Mr Q discovered a large number of transactions on his account which he says he didn't authorise.

Mr Q went through his account history and discovered over £15,000 in disputed transactions had debited his account between 24 April 2017 and the end of July 2017. There were many payments to two separate gambling companies along with payments to debt collections agencies and other merchants. All of the disputed spending was carried out without the presence of the physical card; only the card details were used.

Mr Q had continued to use his account throughout the period of disputed transactions. He made cash machine withdrawals and some balance enquiries. He also carried out some online transactions which he doesn't dispute.

Bank of Scotland investigated Mr Q's claim but said it wouldn't be refunding the transactions. It said:

- it would be unusual for a fraudster to use an account for gambling as that person would have no access to any winnings;
- despite that first point, winnings amounting to £6,400 had been credited back to Mr Q's account;
- one of the gambling companies confirmed the account held with it was in Mr Q's name with the correct address;
- Mr Q had checked the balance of his account prior to two cash machine withdrawals and so he should have been aware something was wrong given the difference in the account balance.

Bank of Scotland did raise a chargeback claim with one of the merchants used – an online streaming service. It initially refunded those transactions but later reversed the refund once it found out from the streaming service that it was reimbursing Mr Q directly. There's been no further comment on this point by Mr Q and so I've not included these particular transactions in my investigation.

Mr Q was unhappy with the bank's response. He pointed out that the email address and phone number held by the gambling companies wasn't his and one of them didn't even have the correct name.

Mr Q said he hadn't noticed the changing balance on his account as he wasn't paying that much attention. He's also mentioned that he thought there might be certain funds pending and perhaps kept in a holding account.

Mr Q brought his complaint to our service and one of our investigators looked into it. He didn't uphold the complaint and felt it was more likely than not that Mr Q had either carried out the transactions himself or had authorised someone else to use his card.

Our investigator, in explaining his findings, highlighted some of the same reasoning the bank had put forward. He was satisfied an unknown fraudster was unlikely to have spent from Mr Q's account on gambling only to return money to the same account. He also felt it was strange Mr Q hadn't noticed any of the disputed activity when he checked his balance at cash machines.

He noted there had been numerous calls to the bank on its automated system, considering these were most likely balance enquires. He didn't make a finding on whether he felt it was more likely than not to have been Mr Q making those calls but discovered someone would have needed to know: account number, sort code, date of birth and CVV security code on the back of the card.

Mr Q disagreed with our investigator's findings and asked for an ombudsman's review of his complaint. We asked Mr Q for any specific points he wished to make following the investigator's opinion. We didn't hear anything further and so I've proceeded to review his case based on what we have on file to date.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I'm not upholding it. I'll explain why.

My investigation has focused on whether the bank can hold Mr Q responsible under the provisions of the Payment Service Regulations 2009. I need to be satisfied whether it's more likely than not Mr Q authorised the transactions he's disputed by either carrying them out himself or allowing someone else to do so.

Where evidence and information is incomplete I must base my findings on the balance of probabilities. That is to say what I think is more likely than not to have happened.

I, like the bank and our investigator, have considered the nature of the spending on Mr Q's account. The vast majority of Mr Q's stated losses are through gambling transactions. And it's true Mr Q's stated losses have in effect been reduced by the incoming funds from the same gambling companies.

This type of activity does appear strange as there is very limited benefit to a fraudster from carrying out such activity. There would be no prospect of being able to withdraw any winnings unless the third party was able to access a cash machine, spend with other merchants or withdraw in branch. I can't see that's happened or, at least, such activity hasn't been reported by Mr Q as being fraudulent. So I'm then left to question why an unknown party would transfer winnings to Mr Q's account at all.

I'm also concerned by the two balance enquiries before cash is withdrawn from a cash machine by Mr Q. He has said he simply didn't notice the difference in what his balance was and what it should have been. But that seems fairly implausible given the significant differences involved.

I'm satisfied it's more likely than not Mr Q had some idea of what his account balance would have been around the time the disputed spending starts. I say so because the account was being used regularly with deposits, withdrawals and card payments being made.

I can also see there was what's been explained as a bank error where £7,000 credited to – and then debited from – Mr Q's account on 10 April 2017. Mr Q has previously said he was aware of that error and so it seems likely he would have known what his balance was once the account was corrected. At that point the balance stood at £6,477.30. It's quite possible Mr Q would have been fully informed of his balance after this point, for example when his statement was issued or following the paying in of cheques to his account.

Mr Q then carries out a balance enquiry on 7 July 2017. He's confirmed this was him. Up to this point – since 23 May 2017 – Mr Q had carried out approximately £1,250 of spending whilst paying in over £2,300. And so there should have been a net gain of around £1,000 on the account balance. But instead, as a result of the disputed transactions, the balance had reduced to £4,147.27. It had been £8,293.64 on 22 May 2017 and so the difference was around £4,000. That's a significant difference and I'm not persuaded such a large amount could simply be overlooked. The account balance hadn't been that low since 14 March 2017, some four months earlier and before Mr Q started new employment.

Mr Q's balance then increases by over £2,000 from 7 to 17 July 2017. That's despite Mr Q only paying in £425. The remainder of the increased balance comes from winnings placed back into the account by the gambling company. I again have difficulty in seeing how such a large change in the balance could go unnoticed.

I'm not persuaded by Mr Q's explanation of thinking funds might have been placed into a holding account before crediting his own account. It doesn't fit with his confirmed balance enquiries. And it would also mean funds he was paying in weren't being credited to his account for a month and a half. That's how far back credits would have to go in order to make up the £2,000 increase between 7 and 17 July 2017. It doesn't seem reasonable for someone to have believed that was a likely explanation for an incorrect balance, even if they only had limited banking knowledge.

I don't believe the telephone activity on the account suggests an unknown fraudster being in operation either. I think the investigator is right in concluding the calls to the bank are most likely to check the balance. But those checks aren't then followed by transactions on the account. That seems strange if a fraudster was in operation. It'd mean there was an individual with access to Mr Q's card details, enough personal and security information to call the bank and know there was money available for them to spend and yet not proceeding to do so.

I acknowledge there are elements to this case that do support Mr Q's claim. The fact that one of the gambling accounts isn't in his name and is registered to a different address. The debt collection payments don't appear to relate to debts in Mr Q's name either, based on his credit report. But, on balance, I don't think the bank has treated Mr Q unfairly and I don't find it needs to refund the disputed transactions. I believe it's more likely than not he authorised the transactions himself or allowed someone else to use his card details.

### **my final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 17 January 2020.

Ben Murray  
**ombudsman**